



P19790.A14

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants : Dr. Günter HALMSCHLAGER et al.
Appln. No. : 09/646,119
Filed : January 21, 2000
§ 371 Date : October 30, 2000
For : MACHINE AND PROCESS FOR PRODUCING A MULTI-LAYERED FIBROUS WEB

Group Art Unit: 1731
Examiner: J. Fortuna

REPLY BRIEF UNDER 37 C.F.R. 1.193(b)(1)

Commissioner for Patents
P.O. Box 1450
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Sir:

This Reply Brief is in response to the Examiner's Answer dated April 8, 2004, the period for reply extending until June 8, 2004.

In the Examiner's Answer, the Examiner has:

- (1) revised the rejection as set forth as Issue A in Appellants' Appeal Brief by now rejecting only claims 46, 47, and 74 under 35 U.S.C. §102(b) as anticipated by TURNER; and
- (2) revised the rejection as set forth as Issue B in Appellants' Appeal Brief by now

rejecting claims 48 – 52 and 62 – 73 under 35 U.S.C. §103(a) as being unpatentable over TURNER as evidenced by U.S. Patent Nos. 3,378,435; 5,607,551; and 5,238,534 and GB 2 283 766.

Appellants note that this Reply Brief is being filed under 37 C.F.R. 1.193(b)(1) and is directed to the arguments presented in the Examiner's Answer, and, therefore, must be entered unless the final rejection is withdrawn in response to the instant Reply Brief. With regard to this Reply Brief, Appellants note that they are addressing points made in the Examiner's Answer and not repeating the arguments set forth in the Appeal Brief.

POINTS OF ARGUMENT

First Issue

Appellants acknowledge that, as the Examiner has withdrawn the rejection of claims 75 and 76 over the art of record, these claims are allowable. Moreover, Appellants further acknowledge that, as the Examiner has withdrawn the rejection of claims 77 – 80 and 89 – 97 over the art of record, these claims contain allowable subject matter. Further, as these claims depend from independent and allowable claim 75, Appellants submit that these claims are likewise allowable.

Accordingly, as claims 75 – 80 and 89 – 97 are allowable, these claims are no longer part of the pending appeal.

Second Issue

Appellants submit that TURNER fails to disclose at least two formers for forming at least two layers in which *each layer has a higher content of fines on one side* respectively, and a couching zone in which the at least two layers are couching together such that *each layer's side having a higher content of fines contact each other*. In response to Appellants' argument, the Examiner has asserted that no structure or manipulative steps have been recited in the claims to obtain the fines distribution as claimed.

However, the Examiner is not considering that the structure recited in at least independent claim 46 includes, not only the elements, but also the arrangement of those elements. Thus, Appellants submit that, contrary to the Examiner's assertions, independent claim 46 recites the elements and their arrangement in order to define the invention. Moreover, Appellants note that, while a certain function or operation may arise due to the specifically recited arrangement of elements, the Examiner cannot merely disregard the recited structure and arrangement as functional or intended use, as the Examiner has done in the final action.

Further, Applicants note that it is clear from the disclosure of TURNER that this applied document certainly fails to show the necessary arrangement of elements to anticipate the recited arrangement of at least independent claim 46.

In this regard, Appellants submit that, in addition to reciting at least two formers, the claims recite that these formers form at least two layers in which *each layer has a higher*

content of fines on one side. Further, the claims recite a couching zone in which the at least two layers are couched together such that *each layer's side having a higher content of fines contact each other*. Appellants submit that this recited arrangement is not disclosed or even suggested by TURNER. In fact, Appellants submit that, as TURNER fails to disclose forming individual layers having a higher content of fines on one side, this document cannot even arguably suggest an arrangement of such formers such that a couching zone is provided to couch together respective layer sides having higher content of fines, as recited in at least independent claim 46.

Still further, Appellants submit that, as TURNER teaches against a former forming a layer having a higher content of fines on one side, *see, e.g.*, TURNER, col. 1, lines 52 – 66, Appellants submit that it would not have been obvious to one ordinarily skilled in the art to modify TURNER in any manner that would render unpatentable the instant invention.

Thus, Appellants submit that TURNER fails to anticipate or render unpatentable the instant invention, and requests that the Board reverse the Examiner's decision to finally reject the claims.

Third Issue

Appellants submit that, contrary to the Examiner's assertions, TURNER fails to provide any disclosure that it is inherently capable of operating as the instant invention. In particular, Appellants note that TURNER fails to disclose forming individual layers that are

structurally identical to those formed by the formers recited in at least independent claims 46.

As such, Appellants submit that TURNER cannot even arguably disclose or even suggest a couching zone that is arranged to contact respective sides of the layers having a higher content of fines together.

Further, Appellants note that TURNER provides a specific and detailed description of the layers formed on the formers, *see, e.g.*, TURNER, col. 1, lines 52 – 66, which is wholly in contrast to the features recited in at least independent claim 46. In this regard, Appellants again submit that ply surfaces having a higher fines to fillers content (as disclosed by TURNER) is not the same as a ply having one surface with a higher fines content than the other surface, which is recited in Appellants' claims.

Moreover, Appellants submit that neither TURNER nor the other art of record provide any suggestion for modifying TURNER in a manner contrary to its express disclosure. As such, Appellants submit that no proper modification of TURNER can render the instant invention obvious.

Thus, Appellants submit that TURNER fails to anticipate or render unpatentable the instant invention, and requests that the Board reverse the Examiner's decision to finally reject the claims.

Fourth Issue

Appellants submit that, notwithstanding the additional documents cited by the

Examiner, none of the applied documents in combination with TURNER renders unpatentable the invention recited in at least independent claim 46.

In particular, while the Examiner has provided additional documents purportedly showing different types of formers, none of the applied art teaches or suggests, *inter alia*, at least two formers for forming at least two layers in which *each layer has a higher content of fines on one side* respectively, and a couching zone in which the at least two layers are couched together such that *each layer's side having a higher content of fines contact each other*, wherein at least one of the at least two formers comprises *at least one gap former*, as recited in at least independent claim 46.

Because none of these documents teaches or suggests at least the above-noted features of the invention, Appellants submit that no proper combination of these documents can render obvious the combination of features recited in at least independent claim 46.

Accordingly, Appellants request that the Board reverse the Examiner's decision to finally reject the claims under 35 U.S.C. §103(a).

CONCLUSION

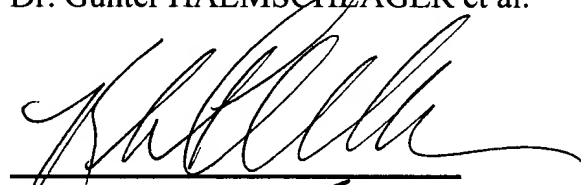
For the reasons expressed above, Appellant respectfully requests that the grounds of rejection advanced by the Examiner be reversed. Appellants further request that the application be returned to the Examining Group for prompt allowance.

This Reply Brief is submitted herewith in triplicate for the convenience of the Board.

P19790.A14

Although neither a fee nor an extension of time is believed to be due with this Reply Brief, if an extension of time is necessary, Appellants respectfully request an extension of time under 37 C.F.R. 1.136(a) for as many months as would be required to render this submission timely. Further, the Commissioner is hereby authorized to charge any additional fee due to Deposit Account No. 19-0089.

Respectfully submitted,
Dr. Günter HALMSCHLAGER et al.



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June 8, 2004
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